

### § 26.33

(c) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(d) Administer oaths and affirmations;

(e) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(f) Rule on motions and other procedural matters;

(g) Regulate the scope and timing of discovery;

(h) Regulate the course of the hearing and the conduct of representatives and parties;

(i) Examine witnesses;

(j) Receive, rule on, exclude, or limit evidence;

(k) Upon motion of a party, take official notice of facts;

(l) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(m) Conduct any conference, argument, or hearing on motions in person or by telephone;

(n) Upon motion, except where mandated by statute, extend the time within which any act required by these rules must be performed where necessary to avoid prejudicing the public interest or the rights of the parties, or upon showing of good cause; and

(o) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under subpart B of this part.

### § 26.33 Ex parte communications.

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

### § 26.34 Sanctions.

(a) The ALJ may sanction a person, including any party or representative, for failing to comply with an order, rule, or procedure governing the proceeding; failing to prosecute or defend

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an action; or engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any sanction, including, but not limited to, those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order compelling discovery, the ALJ may impose an appropriate sanction for such noncompliance, including, but not limited to, the following:

(1) Drawing an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deeming any matter about which an admission is requested to be admitted;

(3) Prohibiting the party failing to comply with the order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; or

(4) Striking any part of the pleadings or other submissions of the party failing to comply with the order.

(d) If a party fails to prosecute or defend an action brought under subpart B of this part, the ALJ may dismiss the action or may issue a decision against the non-prosecuting or defending party. Such decision of the ALJ shall constitute final agency action and shall not be appealable to the Secretary under § 26.52 of this part.

(e) The ALJ may refuse to consider any motion, request, response, brief, or other document that is not filed in a timely fashion.

### § 26.35 Disqualification of ALJ.

(a) An ALJ in a particular case may disqualify himself or herself.

(b) A party may file with the ALJ a motion for the ALJ's disqualification. The motion shall be accompanied by an affidavit alleging the grounds for disqualification.

(c) Upon the filing of a motion and affidavit, the ALJ shall proceed no further in the case until the matter of disqualification is resolved.

(d) If the ALJ does not withdraw from the proceedings, a written statement of his or her reasons for electing